

**NOT FOR PUBLICATION**

**SEP 14 2006**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RAMON FROILAN GARCIA-  
GONZALEZ,

Defendant-Appellant.

No. 05-50728

D.C. No. CR-04-03238-IEG

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Irma E. Gonzalez, District Judge, Presiding

Submitted September 11, 2006<sup>\*\*</sup>

Before: PREGERSON, T. NELSON, and GRABER, Circuit Judges.

Ramon Froilan Garcia-Gonzalez appeals his 70-month sentence imposed following his guilty plea to being found in the United States after illegal re-entry,

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Garcia-Gonzalez contends that the district court violated his constitutional rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed by *United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006).

Garcia-Gonzalez next contends that the enhanced sentence was inappropriate because the government did not allege, nor did he admit, the date of his deportation. At the plea colloquy, Garcia-Gonzalez admitted that he had been previously deported, but did not specify the date on which he had been deported. At sentencing, the district court enhanced Garcia-Gonzalez's sentence based on his June 13, 2002 domestic-violence conviction; the district court also found that Garcia-Gonzalez had been removed four times, including a September 16, 2004 removal.

It was plain error for the district court to find a subsequent removal that was neither admitted by Garcia-Gonzalez nor proven to a jury. *See United States v. Covian-Sandoval*, No. 05-50543, 2006 WL 2506408, at \*5-\*8 (9th Cir. Aug. 31,

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2006). However, Garcia-Gonzalez's substantial rights were not affected because he never objected to the allegation of the 2004 removal, either in response to the presentence report or at sentencing. *See id.* We therefore reject this contention as well.

Garcia-Gonzalez finally contends his sentence was unreasonable because the district court incorrectly calculated the guideline range under the now-advisory U.S. Sentencing Guidelines by enhancing his sentence based on his prior conviction. Because the district court correctly calculated Garcia-Gonzalez's advisory sentencing guidelines range, and did discuss the sentencing factors of 18 U.S.C. § 3553(a), the 70-month sentence imposed was reasonable. *See United States v. Plouffe*, 436 F.3d 1062, 1063 (9th Cir. 2006), *cert. denied*, 126 S. Ct. 2314 (2006).

**AFFIRMED.**